

REMARKS

Claims 1-20 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-3 and 6 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

The purpose of 35 U.S.C. § 112, second paragraph, is to define the “metes and bounds of the claimed invention with a reasonable degree of precision and particularity”. *In re Venezia*, 189 USPQ 149, 151 (CCPA 1976) (copy attached). In *In re Venezia*, the court specifically examined claim language including the phrases “adapted to be affixed” and “adapted to be repositioned”. *In re Venezia*, 189 USPQ at 152. The court went on to find that there was “nothing indefinite in these claims. One skilled in the art would have no difficulty determining whether or not a particular collection of components infringed the collection of interrelated components defined by these claims”. *Id. at 152* Accordingly, Applicant respectfully submits that the claim language of the present invention including the phrases “adapted to be used” and “adapted to be separated” is not indefinite. Rather, one skilled in the art would have no difficulty determining the metes and bounds of the claimed invention with particularity and precision. Therefore, Applicants respectfully request reconsideration and withdrawal of this rejection.

REJECTION UNDER 35 U.S.C. § 102

Claims 1, 9-12, 16, 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Martin et al (U.S. Pat. No. 5879227). This rejection is respectfully traversed.

At the outset, Applicants note that claims 1 and 17 have been amended to recite, in part, that the sheet material includes “a body portion, the body portion being provided with a first configuration adapted to be used with a first platen configuration” and configurable to a “second differently configured platen”. Martin does not disclose this feature.

Martin discloses an abrasive sheet 22 having a tip portion 14 removable from the abrasive sheet 22 and rotatable to a new orientation having the same configuration. (Column 3, lines 1-4). The body of Martin is not configurable to accommodate a differently sized platen configuration as disclosed in claims 1 and 17. Accordingly, Martin cannot be said to anticipate the invention disclosed in claims 1 and 17. Further, claims 9-12 and 16 depend from independent claim 1 and are likewise in condition for allowance. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 1, 2, 15, 17, 18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wiand (U.S. Pat. No. 5681362). This rejection is respectfully traversed.

At the outset, Applicants note that claim 1 has been amended to recite, “a sheet material having a body portion, the body portion being provided with a first configuration adapted to be used with a first platen configuration and having first segments defining regions of weakened material, wherein said sheet material is adapted to be separated

along said first segments to change a configuration of said body portion of said sheet material". Similarly, claim 17 includes the limitations of "a sheet material having a body portion, the body portion being provided with a first configuration adapted to be used with a first platen configuration and having first marking segments, wherein said sheet material is adapted to be separated along said first marking segments to change a configuration of said body portion of said sheet material". These features are not disclosed by the cited art.

Wiand discloses an abrasive article 410 that is cut into various shapes by a cutter 428. (Column 8, lines 20-22). The abrasive article 410 does not include segments of weakened material (per claim 1) or marking segments (per claim 17). Rather, only a "series of lines 432 are shown *relative to* the article 410 in Fig. 13A". (Column 8, lines 27-28, emphasis added). These lines 432 are **not on** the abrasive article 410 but are shown only illustratively *relative to* the abrasive article 410 in order to illustrate the way in which the abrasive article 410 can be cut into rectangular strips 430 for use with a sand belt. (Column 8, lines 24-27). There is no teaching or suggestion that the lines 432 are on the abrasive article 410. Therefore, claims 1 and 17 define over the cited art. Further, claims 2, 25, and 18 depend from independent claims 1 and 17 and likewise define over the cited art. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

REJECTION UNDER 35 U.S.C. § 103

Claims 1, 3-6, 17, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Longstaff et al (U.S. Pat. No. Des. 389388) in view of Martin et al (U.S. Pat. No. 5879227).

As noted above, claim 1 recites “a body portion” having “segments defining regions of weakened material” and claim 17 recites “a body portion” having “ first marking segments”, both to be used to configure the body portion to differently sized platens. Martin and Longstaff fail to disclose these features.

As also noted above, Martin discloses a nose tip 14 having weakened segments in order to change the orientation of the nose tip 14. It does not disclose weakened (per claim 1) or marked segments (per claim 17) in its body portion that are configurable for differently sized platens.

Longstaff discloses an abrasive sheet having a nose tip that is movable to different orientations. (Figures 1-3). It does not disclose weakened (per claim 1) or marked segments (per claim 17) in its body portion that are configurable for differently sized platens.

Accordingly, Longstaff and Martin fail to render obvious the invention as claimed in claims 1 and 17. Further, claims 3-6, 19, and 20 depend from claims 1 and 17 and are likewise not rendered obvious by the cited art. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 7-8, 13-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wiand (U.S. Pat. No. 5681362) in view of Martin et al (U.S. Pat. No. 5879227). This rejection is respectfully traversed.

Claims 7-8 and 13-14 depend from independent claim 1 and, for the reasons set forth above, similarly define over the cited art. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

However, Applicants respectfully disagree with the Examiner that it would be obvious to combine the teachings of Wiand and of Martin. The abrasive article 410 of Wiand is not ready for use on a platen. Rather, it is intended to be cut to a specific configuration prior to use, as indicated by the cutting of the abrasive article into strips 414 for use with a sand belt. (Column 8, lines 20-27). Further evidence that the abrasive article 410 is not ready for use on a platen is indicated by the residue of the injection molded material extending from the abrasive article 410 as seen in Figure 13A.

The weakened segments of Martin are intended to allow removal and replacement of the worn nose tip 14. (Column 3, lines 3-4). There is no suggestion to provide weakened segments to allow for adjustment of the body portion of the abrasive article 22 to fit variously sized platens. In this regard, the combination of Wiand and Martin by the Examiner is done with the use of impermissible hindsight.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the

Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: July 23, 2003

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Attachment: In re Vanezia, 189 USPQ 149

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nt's allegations are not supported evidence.

e evidence now of record, in our s support Rinehart's allegations. tion that the processes of Pengilly ro cannot satisfactorily be scaled either challenged nor rebutted. mere reference to "commercial ntities" in the claims and affidavit itself establish patentability, it does the environment of the invention. es the problem solved and gives n to Rinehart's contribution. The must therefore be considered, and nces must be evaluated, in the light rt to achieve commercially effective on. As will appear hereinbelow, the evidence also spotlights portions of r art disclosures indicating unob- s of the claimed process.

rue that Pengilly and Munro both processes for polyester production t esterification. Rinehart's affidavit that he began with an effort to the process of Pengilly on a commer- le and that the only essential e between the claimed process and Pengilly is the employment of nspheric pressure.

board adopted the earlier opinion, considered the claimed process as hat of Pengilly with the substitution peratmospheric pressure disclosed ro or that of Munro with the use of a ed polyester as disclosed by Pengil- that view of the claimed process does l the inquiry. The question remains r it would have been obvious, in scal- Pengilly's process, to have employed s higher pressures or in scaling up Munro to have employed Pengilly's ed polyester.

The tribunals below did not meet the ment of establishing some predic- of success in any attempt to combine ts of the reference processes in a com- l scale operation. As in *In re Naylor*, PA 902, 369 F.2d 765, 152 USPQ 106 , we find nothing in the record which lead one of ordinary skill to anticipate sful production on a commercial scale a combination of such elements, it increase in glycol-acid ratio. The in fact reflects the contrary. The view uccess would have been "inherent" t, in this case, substitute for a showing asonable expectation of success. ncy and obviousness are entirely nt concepts. In *re Spormann*, 53 1375, 363 F.2d 444, 150 USPQ 449); In *re Adams*, 53 CCPA 996, 356 998, 148 USPQ 742 (1966).

The board cited the indication in both Pengilly and Munro that their processes led to rapid reaction time and concluded that improved reaction time would be expected if elements of those processes were combined. The evidence of record establishes, however, that reaction times of both prior processes lengthen as the processes are scaled up.

The board held the view that Munro's teaching of higher pressures to increase reaction rate would have provided an obvious solution to the problem Rinehart encountered in scaling up the process of Pengilly. But Rinehart's problem was not the need for increased reaction rate. It was, as the evidence established, the existence of lumps of frozen polymer. That problem is nowhere alluded to in either Pengilly or Munro, and of course no suggestion of a solution appears in either reference.

Moreover, Pengilly suggested that superatmospheric pressure was productive of certain disadvantages, particularly the need for use of a "large excess" of glycol. The use of superatmospheric pressure in a direct esterification process was referred to in other prior patents of record. With the exception of Munro, however, each such reference cited disadvantages of its use or an inability to find it workable. Munro's disclosure of superatmospheric pressure is rendered an abstraction with respect to appellant's problem by Munro's indication of the same excess glycol requirement when a large scale operation is contemplated. Munro employs a large excess of glycol (a ratio of glycol to acid of 3:1) in his example 5, the only example devoted to larger scale production. Rinehart's large scale production process is limited to a substantially equimolar ratio of glycol to acid. In view of all of the evidence, we cannot agree that Munro would suggest to one skilled in the art the use of superatmospheric pressure to solve the problem of scaling up the process of Pengilly.

Similarly, we find no suggestion in Pengilly or in Munro that Pengilly's preformed ester be employed in Munro's process to overcome the problems encountered in scaling up the process of Munro. Munro, as co-inventor with Lewis in earlier British Patent No. 776,282, was familiar with the use of a preformed polyester in direct esterification, yet neither Munro nor his co-inventor Maclean suggested its use with superatmospheric pressure in the cited reference. We find that the Munro patent contains its own solution to large scale operation, i.e., the use of excess glycol referred to above. That solution is not employed by appellant.

[10] Absence of any suggestion in either Pengilly or Munro that features of the

process of one should be combined with features of the other to achieve the commercial scale production of which neither is capable requires a holding that the rejection herein was improper. In *re Avery*, 518 F.2d 1228, 186 USPQ 161 (CCPA 1975). In view of that holding, it is unnecessary to consider Rinehart's allegations of commercial success and satisfaction of long-felt need.

The decision of the board is reversed.

Court of Customs and Patent Appeals

In re Venezia

No. 75-601 Decided Mar. 11, 1976

PATENTS

1. Claims — Indefinite — In general (§20.551)

Construction of specification and claims — Defining terms (§22.45)

Claims that define claimed invention's metes and bounds with reasonable degree of precision and particularity are 35 U.S.C. 112, second paragraph, definite; claim language calling for sleeves "adapted to be fitted" over insulating jacket imparts structural limitation to sleeve rather than merely directing activities to take place in future; structures of components of completed assembly may be defined in terms of interrelationship of components, or attributes they must possess, in completed assembly.

2. Claims — Indefinite — Mechanical (§20.556)

Claims reciting all essential parts of "kit" of parts that may or may not be made into completed assembly are not incomplete for failing to recite completed assembly.

3. Claims — Indefinite — In general (§20.551)

In *re Collier*, 159 USPQ 266, is inapposite to claims containing language precisely defining present structural attributes of interrelated component parts of "kit" so that later assembly may be effected, rather than describing activities that may or may not occur.

4. Double patenting — In general (§33.1)

Patentability — Subject matter for patent monopoly — In general (§51.601)

Court of Customs and Patent Appeals decisions on double patenting are not

applicable to interpreting 35 U.S.C. 101 "any manufacture;" Section 101 "same invention" type double patenting cases construe "a patent therefore."

5. Patentability — Subject matter for patent monopoly — In general (§51.601)

Group or "kit" of interrelated parts is 35 U.S.C. 101 "manufacture," and is not excluded from patent protection.

Particular patents — Splicing

Venezia, Method of Splicing High Voltage Shielded Cables and Splice Connector Therefor, rejection of claims 31-36 reversed.

Appeal from Patent and Trademark Office Board of Appeals.

Application for patent of J. William Venezia, Serial No. 31,500, filed Apr. 24, 1970. From decision rejecting claims 31-36, applicant appeals. Reversed.

Donald R. Dunner, and Lane, Aitken, Dunner & Ziems, both of Washington, D.C. (S. Michael Bender, North Tarrytown, N.Y., Richard A. Craig, New York, N.Y., and Arthur Jacob, Hackensack, N.J., of counsel) for appellant.

Joseph F. Nakamura (T.E. Lynch, of counsel) for Commissioner of Patents and Trademarks.

Before Markey, Chief Judge, and Rich, Baldwin, Lane, and Miller, Associate Judges.

Lane, Judge.

This is an appeal from the decision of the Patent and Trademark Office Board of Appeals (board) affirming the rejections of claims 31 through 36 in application serial No. 31,500, filed April 24, 1970, for "Method of Splicing High Voltage Shielded Cables and Splice Connector Therefor." We reverse.

The Invention

Appellant's invention is a splice connector having interrelated parts adapted to be assembled in the field to provide a splice connection between a pair of high voltage shielded electric cables.

Appellant's application contains claims drawn to the completed connector and to the method of making the splice connection, which have been allowed by the Patent and Trademark Office. On appeal before us are claims drawn to a splice connector "kit" consisting of the parts which are used in

making the splice in their unassembled condition.

Claim 31, with our emphasis, is representative of the claims on appeal:

31. A splice connector kit having component parts *capable of being assembled* in the field at the terminus of high voltage shielded electrical cables for providing a splice connection between first and second such cables, said cables each having a conductor surrounded by an insulating jacket within a conductive shield wherein a portion of the conductive shield is removed to expose the insulating jacket and a portion of the insulating jacket is removed to expose the conductor at the terminus of the cable, the kit comprising the combination of:

a pair of sleeves of elastomeric material, each sleeve of said pair *adapted to be fitted* over the insulating jacket of one of said cables, each said sleeve having an external surface and a resiliently dilatable internal bore for gripping the insulating jacket to increase the dielectric strength of the creep path along the insulating jacket;

electrical contact means *adapted to be affixed* to the terminus of each exposed conductor for joining the conductors and making an electrical connection therebetween;

a pair of retaining members *adapted to be positioned* respectively between each of said sleeves fitted over the insulating jacket of each said cable and the corresponding terminus of each said cable, said retaining members each having means cooperatively associated therewith for maintaining each said member's position relative to the insulating jacket on each said cable and for precluding axial movement of the sleeve toward the corresponding terminus of each said cable; and

a housing, said housing having an internal bore extending therethrough from end to end, said housing including portions adjacent each end thereof defining said internal bore and being resiliently dilatable *whereby said housing may be slideably positioned* over one of said cables and *then slideably repositioned* over said sleeves, said retaining members, and said contact means *when said sleeves, said retaining members and said contact means are assembled* on said cables as hereinaforesaid, said resiliently dilatable portions of said housing respectively gripping the corresponding external surface of each said sleeve in watertight sealing relationship therewith and said housing having a further portion intermediate its ends defining said internal bore and forming a sealed chamber

enclosing at least said contact means and the exposed portions of said cable conductors when said housing is in its repositioned location.

The Rejections

Claims 31-36 were rejected under 35 USC 112, second paragraph, as indefinite and incomplete in not defining a completed article of manufacture. The examiner particularly relied on *In re Collier*, 55 CCPA 1280, 397 F.2d 1003, 158 USPQ 266 (1968), as support for this rejection.

Claims 31-36 were additionally rejected under 35 USC 101 because they were drawn to a plurality of separately and discretely listed and defined manufactures instead of a manufacture.

The Board

The board at first unanimously sustained both of the above rejections. With respect to the section 112 rejection it stated:

In the *Collier* case, the two elements [see bracketed elements [1] and [2] of *Collier* claim 17, *infra*] recited specifically in the claims there under consideration were described in terms of intended uses and capability, and the like. The Court said:

"We agree with the Board, however, that the claim does not positively recite structural relationships of the two elements, identified as (1) and (2) above, in its recitation of what may or may not occur. In this sense it fails to comply with section 112, [second paragraph] In [sic] failing distinctly to claim what appellant in his brief insists is his actual invention."

An inspection of the claims here under consideration, see for example claim 31 above, discloses a similar situation. Although the preamble refers to the structure as a "kit", the elements are recited without present cooperation. The language is futuristic and conditional in character, thus, a pair of sleeves - to be fitted - electrical contact means - to be affixed - a pair of retaining numbers [sic, members] - to be positioned - a housing - may be slideably positioned - slideably repositioned - when said sleeves are assembled on said cables - when said housing is in its repositioned location.

From the above it is clear that the language of the claim taken as an example is directed to assembly to take place in the future. No present positive structural relationships are recited.

In affirming the section 101 rejection the board stated:

[Appellant] urges that the elements of his claimed combination are "joined together in a kit of component parts". Such joining as may be recited in the claims, as we have pointed out above in connection with the rejection under 35 USC 112, relates to matters which may take place in the future. No *present* coercion is recited. The presence of the word "kit" in the preamble, we do not think fairly links the elements separately recited in the claims. Appellant has referred to no language in the claims which would support such "joining" and we know of none. [Emphasis in original.]

In a subsequent decision, upon reconsideration, one of the board members dissented, finding that appellant had distinctly claimed what he regarded as his invention under section 112. The dissenting member of the board also found that it was not fatal under section 101 that the cooperation of the claimed elements was recited as occurring at a future time.

This posture of the board remained intact following a third opinion rendered after a second request for reconsideration by appellant.

Opinion

Section 112 Rejection

[1] We have reviewed the disputed claims and in particular the language criticized by the examiner and the board. We conclude that the claims do define the metes and bounds of the claimed invention with a reasonable degree of precision and particularity, and that they are, therefore, definite as required by the second paragraph of section 112. In *re Conley*, 490 F.2d 972, 180 USPQ 454 (CCPA 1974); In *re Miller*, 58 CCPA 1182, 441 F.2d 689, 169 USPQ 597 (1971); In *re Borkowski*, 57 CCPA 946, 422 F.2d 904, 164 USPQ 642 (1970). As we view these claims, they precisely define a group or "kit" of interrelated parts. These interrelated parts may or may not be later assembled to form a completed connector. But what may or may not happen in the future is *not* a part of the claimed invention. The claimed invention does include present structural limitations on each part, which structural limitations are defined by how the parts are to be interconnected in the final assembly, if assembled. However, this is not to say that there is anything futuristic or conditional in the "kit" of parts itself. For example, paragraph two of claim 31 calls for "a pair of sleeves * * * each sleeve of said pair adapted to be fitted over the insulating jacket of one of said cables." Rather than being a mere direction

of activities to take place in the future, this language imparts a structural limitation to the sleeve. Each sleeve is so structured or dimensioned that it can be fitted over the insulating jacket of a cable. A similar situation exists with respect to the "adapted to be affixed" and "adapted to be positioned" limitations in the third and fourth paragraphs of the claim. The last paragraph of claim 31 contains additional language criticized by the board, including "may be slideably positioned," "slideably repositioned," "when said sleeves * * * are assembled," and "when said housing is in its repositioned location." However, this language also defines present structures or attributes of the part of the "kit" identified as the housing, which limits the structure of the housing to those configurations which allow for the completed connector assembly desired. Again, a present structural configuration for the housing is defined in accordance with how the housing interrelates with the other structures in the completed assembly. We see nothing wrong in defining the structures of the components of the completed connector assembly in terms of the interrelationship of the components, or the attributes they must possess, in the completed assembly. More particularly, we find nothing indefinite in these claims. One skilled in the art would have no difficulty determining whether or not a particular collection of components infringed the collection of interrelated components defined by these claims. In re Miller, supra.

[2] We also fail to see any basis for rejecting appellant's claims for being incomplete in failing to recite a completed assembly. Appellant's invention is a "kit" of parts which may or may not be made into a completed assembly. Since all of the essential parts of the "kit" are recited in the claims, there is no basis for holding the claims incomplete.

We cannot leave our discussion of the section 112 rejection without discussing In re Collier, supra, relied on by both the examiner and the board as support for this rejection. In Collier we were confronted by the following claim:

17. *For use in a ground connection, [1] a connector member for engaging shield means of a coaxial cable means, said connector member comprising a substantially rectangular piece of metal formed into trough form to define a ferrule-forming member, said ferrule-forming member having*

a series of perforations disposed therein toward the axis of the ferrule-forming member and defining inwardly

directed frusto-conical projections having jagged edges defining lances converging toward their tips.

said ferrule-forming member being *crimpable* onto said shield means with said lances keying into said shield means without penetrating insulation means disposed thereunder.

[2] and ground wire means *for* disposition between said ferrule-forming member and said shield means *upon* the ferrule-forming member being crimped onto the shield means,

said ground wire means *being displaced* in a series of bights around respective perforations to effect serpentine form *when* said ferrule-forming member is crimped onto said shield means. [55 CCPA at 1281-82, 397 F.2d at 1004-05, 158 USPQ at 267. (Emphasis and brackets in original opinion).]

In Collier appellant argued that we were to regard the italicized portions of claim 17 about intended uses, capabilities, and structures which would result upon the performance of future acts, as positive structural limitations. However, we found that the claim did not positively recite any structural relationship between the two elements identified as [1] and [2], in its recitation of what may or may not occur. We concluded that the claim failed to comply with section 112, second paragraph, in "failing distinctly to claim what appellant in his brief insists is his actual invention."

[3] There is no issue in this case of whether appellant is claiming what he regards as his invention. Moreover, although the claims before us contain some language which can be labeled "conditional," this language, rather than describing activities which may or may not occur, serves to precisely define present structural attributes of interrelated component parts of the "kit," such that a later assembly of the "kit" of parts may be effected. Thus, we find In re Collier inapposite to the claims presently before us.

Section 101 Rejection

35 USC 101 provides in pertinent part:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter * * * may obtain a patent therefor * * *.

Both the examiner and the board construed the language "any * * * manufacture" as excluding from its ambit claims drawn to a "kit" of parts, reasoning that a "kit" would be a plurality of separate manufactures, not a single manufacture.

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The solicitor in his brief recognizes that the Patent and Trademark Office has in the past issued patents containing similar claims drawn to "kits" of interrelated parts.¹ He argues, however, that double patenting decisions by this court, holding that an inventor may obtain only one patent on a single invention, show that this court has interpreted portions of section 101 in the singular. From this he reasons that the word "manufacture" in section 101 is to be similarly interpreted.

[4] We do not find our decisions on double patenting to be applicable to an interpretation of the words "any manufacture" in section 101. Suffice it to say that the two situations are totally dissimilar. In the section 101 "same invention" type double patenting cases, all we were construing was the phrase "a patent therefor."

No other authority has been cited, either by the board or the solicitor, to support the narrow construction which the Patent and Trademark Office now seeks to impose on the words "any manufacture" in section 101.

[5] We do not believe the words in question are to be so narrowly construed. To hold that the words "any manufacture" exclude from their meaning groups or "kits" of interrelated parts would have the practical effect of not only excluding from patent protection those "kit" inventions which are capable of being claimed as a final assembly (e.g., a splice connector), but also many inventions such as building blocks, construction sets, games, etc., which are incapable of being claimed as a final assembly. We do not believe Congress intended to exclude any invention from patent protection merely because it is a group or "kit" of interrelated parts. We therefore hold that a group or "kit" of interrelated parts is a "manufacture" as that term is used in section 101.

Accordingly, the decision of the board is reversed.

¹ There are copies of several patents in the record which contain "kit" claims exemplifying this prior practice, including patent No. 3,108,803, claiming a basketball goal set kit, patent No. 3,041,778, claiming a puppet kit, patent No. 1,974,838, claiming a toy construction set, and patent No. 3,355,837, also claiming a toy construction set.

Patent and Trademark Office Trademark Trial and Appeal Board

In re The Cyclone Seeder Co., Inc.

Decided Oct. 20, 1975

Released Dec. 19, 1975

TRADEMARKS

1. Identity and similarity — How determined — Dominant feature (§67.4065)

Identity and similarity — Words — Similar (§67.4117)

"Speedy" is determining element in "Cyclone Speedy Spreader," "Spreader" being disclaimed, with "Cyclone" modifying "Speedy" and suggesting enormous speed; "Cyclone Speedy Spreader" for broadcast spreader/seeders so resembles "Speedy" for corn cribs, power operated agricultural insecticide sprayers, corn shredders, and row crop shields that confusion is likely.

Appeal from Examiner of Trademarks.

Application for registration of trademark of The Cyclone Seeder Co., Inc., Serial No. 439,884. From decision refusing registration, applicant appeals. Affirmed.

Oltch & Knoblock, South Bend, Ind., for applicant.

Before Lefkowitz and Bogorad, Members, and Rice, Acting Member.

Bogorad, Member.

An application has been filed by The Cyclone Seeder Co., Inc. to register the mark "CYCLONE SPEEDY SPREADER", the word "SPREADER" being disclaimed, for broadcast spreader/seeders.

Registration has been refused under Section 2(d) of the Act of 1946 on the ground that applicant's mark as applied to the goods specified in its application so resembles the previously registered mark "SPEEDY" for corn cribs, power operated agricultural insecticide sprayers, corn shredders and row crop shields for use on cultivators' as to be likely to cause confusion or mistake or to deceive.

¹ Reg. No. 680,737 issued June 23, 1959, affidavit under Sec. 8 accepted, affidavit under Sec. 15 received.